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Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In the Supreme Court of the United States

DENBURY MANAGEMENT, INC.

Petitioner

VERSUS

ARLENE GOULAS; RUSSELL J. GOULAS, JR., Individually and on behalf of Blake Goulas

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DENBURY MANAGEMENT, INC.'S PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a contested affirmative defense filed in state court pursuant to the Limitation of Shipowner's Liability Act, 46 U.S.C. §183, can be removed to federal court?

More specifically:

I. Did the lower courts err in holding that the six-month time limit of 46 U.S.C. §185 applies to an affirmative defense of limitation of liability filed in state court pursuant to 46 U.S.C. §183?

II. Did the lower courts err in holding that failure to file a Petition for Limitation of Liability under 46 U.S.C. §185 precluded the removal of a contested defense of limitation of liability filed in state court pursuant to 46 U.S.C. §183?

III. Did the Court of Appeals err in holding that the district court's order of remand did not contain separable and reviewable collateral orders?

LISTING OF ALL PARTIES TO THIS PROCEEDING

1. Denbury Management, Inc., Petitioner

2. ARLENE GOULAS; RUSSELL J. GOULAS, JR., Individually and on behalf of Blake Goulas, Respondents

3. LAW OFFICE OF PAUL C. MINICLIER
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David A. Binegar, Esq.
Counsel for Petitioner

4. LAW OFFICE OF THOMAS SHELTON
Thomas Robert Shelton, Esq.
Counsel for Arlene Goulas, Russell J. Goulas, Jr., Individually and on behalf of Blake Goulas, Respondents

5. BLR CONSTRUCTION - Defendant in state court action (not a party to this appeal)

6. VOORHIES & LABBÉ
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Counsel for BLR Construction

7. C.F. BEAN - Defendant in state court action (not a party to this appeal)

8. GALLOWAY, JOHNSON, TOMPKINS & BURR
Jason Waguespack, Esq.
Counsel for C.F. Bean

9. Gulf Inland - Defendant in state court action (not a party to this appeal)

10. SIMON, PERAGINE, SMITH &
REDFEARN, L.L.P.
Daniel J. Caruso, Esq.
Counsel for Gulf Inland

RULE 29.6 STATEMENT

At the time of plaintiff's alleged accident, Denbury Management, Inc. was a wholly-owned subsidiary of Denbury Resources, Inc. Subsequently, Denbury Management, Inc. was subsumed by Denbury Resources, Inc. Denbury Resources, Inc. is a publicly traded corporation.

TABLE OF CONTENTS

Questions Presented for Review i

Listing of All Parties to this Proceeding ii

Rule 29.6 Statement iv

Table of Contents v

Table of Authorities viii

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit 1

Citations to Opinions Below 1

Jurisdiction 2

Constitutional and Statutory Provisions Involved 2

I. Statement of the Case 2

A. Facts 2

B. Proceedings Below 2

II. Summary of the Argument 4

III. Argument 6

A. Issue Presented 6

B. The Limitation of Shipowners' Liability Act Provides Denbury with the Right to Limit Liability 7

C. The Plaintiffs' Decision to Contest Limitation of Liability Conferred Jurisdiction on the Lower Court 8

D. The District Court Erred in Determining that a Six-Month Time Limitation Attached to a Limitation of Liability Defense Removed from State Court 11

E. The District Court Further Erred in Holding that Failure to File a Complaint for Limitation of Liability Precluded Invocation of Federal Jurisdiction 14

F. The Court of Appeals Erred in Finding that the District Court's Time Bar Determinations Were Not Separable and Reviewable Orders 17

1. The Orders Below 17

2. The Errors Below 18

3. The Law On Separability and Reviewability 19

4. The District Court's Time Bar Determinations Were Separable from the Order of Remand 21

5. The District Court's Time Bar Determinations are Reviewable Under the Collateral Order Exception to 28 U.S.C. §1291 22

a. Conclusive Determination of the Disputed Question . 22

b. Collateral to the Merits . . . 23

c. Unreviewable on Appeal . 23

d. Importance of the Disputed Question 24

G. The Erroneous Decisions Below Significantly Impact The Delicate Balance Between the Savings to Suitors Clause and Federal Admiralty Law 25

H. Compelling the Vessel Owner to File a Complaint of Limitation of Liability Unnecessarily Strains and Consumes Limited Judicial Resources 26

I. The Decisions Below Will Have a Significant Economic Impact on the Marine Industry and Circumvent the Express Intent Underlying the Limitation of Liability Act 27

IV. CONCLUSION 29

TABLE OF AUTHORITIES

Aliota v. Graham, 984 F.2d 1350 (3rd Cir);
cert. denied, 510 U.S. 817, 126 L. Ed. 2d 37,
114 S. Ct. 68 (1993) 20

Angelides v. Baylor College of Medicine,
117 F.3d 833 (5th Cir. 1997) 22

Black Diamond Steamship Corp. v. Robert Stewart
& Sons, Ltd., 336 U.S. 386, 93 L. Ed. 754,
69 S. Ct. 622 (1949) 23, 24, 28

Catlin v. United States, 324 U.S. 229,
89 L. Ed. 911, 65 S. Ct. 631 (1945) 20

Chapman v. Powermatic, Inc., 969 F.2d 160
(5th Cir. 1992); cert. denied, 507 U.S. 967,
122 L. Ed. 2d 774, 113 S. Ct. 1402 (1993) 12

Cincinnati Gas & Electric Co. v. Abel,
533 F.2d 1001 (6th Cir.); cert. denied, 429 U.S. 858,
50 L.Ed.2d 136, 97 S. Ct. 158 (1976) 11

Cohen v. Beneficial Industrial Loan Corp.,
337 U.S. 541, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949) 20

Deep Sea Tankers v. The Long Branch,
258 F.2d 757 (2nd Cir. 1958); cert. denied, 358 U.S.
933, 3 L. Ed. 2d 305, 79 S. Ct. 316 (1959) 11-13

Doleac ex rel. Doleac v. Michalson,
264 F.3d 470 (5th Cir. 2001) 18, 20, 22

Ex Parte Green,
286 U.S. 437, 76 L. Ed. 1212, 52 S. Ct. 602 (1932) ... 8-10, 15

Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U.S. 207, 215, 47 S. Ct. 357, 71 L. Ed. 612 (1927) 16

In the Matter of the Complaint of Vatican Shrimp Co., Inc., 820 F.2d 674 (5th Cir.); cert. denied, 484 U.S. 953, 98 L. Ed. 2d 371, 108 S. Ct. 345 (1987) 12, 14-17

Katsaris v. United States, 684 F.2d 758 (11th Cir. 1982) 20

Kimbro v. Velten, 30 F.3d 1501 (D.C. Cir. 1994), cert. denied, 515 U.S. 1145, 132 L. Ed. 2d 833, 115 S. Ct. 2584 (1995) 20

Langnes v. Green, 282 U.S. 531, 75 L. Ed. 520, 51 S. Ct. 243 (1931) 7-10, 13, 15-16, 22-25

Lauro Lines S.R.L. v. Chasser, 490 U.S. 495, 104 L. Ed. 2d 548, 109 S. Ct. 1976 (1989) 24-25

Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 148 L.Ed.2d 931, 121 S. Ct. 993 (2001) 7-8, 16, 25-26

Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 74 L.Ed.2d 765, 103 S. Ct. 927 (1983) 24

Murray v. New York Central Railroad Co., 287 F.2d 152 (2nd Cir.); cert. denied, 366 U.S. 945, 6 L.Ed.2d 856, 81 S. Ct. 1674 (1961) 12

Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.,
741 F.2d 273 (9th Cir. 1984) 20

Quackenbush v. Allstate Ins. Co.,
517 U.S. 706, 135 L.Ed.2d 1,
116 S. Ct. 1712 (1996) 20, 22-23

Sana v. Hawaiian Cruises, Ltd.,
181 F.3d 1041 (9th Cir. 1999) 12

Signal Oil & Gas Co. v. The Barge W-701,
654 F.2d 1164 (5th Cir. 1981); cert. denied,
455 U.S. 944, 71 L.Ed.2d 656, 102 S. Ct. 1440 12

The Aloha, 56 F.2d 647 (W.D. Wash. 1932) 9

The Chickie, 141 F.2d 80 (3rd Cir. 1944) 11, 15

Thermtron Products, Inc. v. Hermansdorfer,
423 U.S. 336, 46 L.Ed.2d 542,
96 S. Ct. 584 (1976) 19

Tillman v. CSX Transportation, Inc.,
929 F.2d 1023 (5th Cir.); cert. denied,
502 U.S. 859, 116 L.Ed.2d 139,
112 S. Ct. 176 (1991) 18

Waco v. United States Fidelity & Guaranty Co.,
293 U.S. 140, 79 L.Ed. 244, 55 S. Ct. 6 (1934) 19-22, 25

CONSTITUTION, STATUTES AND RULES

United States Constitution Art. III, §2 2

28 U.S.C. §1254(1) 2

28 U.S.C. §1291 ..... 18, 20, 22, 24-25

28 U.S.C. §1331 10

28 U.S.C. §1333 ..... 2, 12, 25

28 U.S.C. §1441 ..... 2, 14

28 U.S.C. §1446 ..... 2, 10

28 U.S.C. §1447 ..... 2, 18-19, 24

28 U.S.C. §2101(c) 2

46 U.S.C. §§181-196 ..... 2-7, 11-18, 21, 23, 25-29

46 U.S.C. §688 3

An Assessment of the U.S. Marine Transportation System - A Report to Congress, (1999) 28

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2002

DENBURY MANAGEMENT, INC.
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VERSUS

ARLENE GOULAS; RUSSELL J. GOULAS, JR.,
Individually and on behalf of Blake Goulas
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Denbury Management, Inc. respectfully petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to review the Judgment of the United States District Court for the Western District of Louisiana in this case.

CITATIONS TO OPINIONS BELOW

The Memorandum Ruling of the United States District Court for the Western District of Louisiana dated July 17, 2001, granting Plaintiff's Motion to Remand was unreported, but, is reproduced in Appendix B to Petitioners' Petition for Writ of Certiorari.

The Fifth Circuit Court of Appeals entered Judgment on April 15, 2002. This decision also unreported, but is reproduced as Appendix C to Petitioners' Petition for Writ of Certiorari.

JURISDICTION

Jurisdiction of this Court is involved under 28 U.S.C. §1254(1) and 28 U.S.C. §2101(c).[1]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution Art. III §2; 28 U.S.C. §§1333, 1441, 1446, 1447; 46 U.S.C. §§181 et seq.

I. STATEMENT OF THE CASE

A. Facts.

Russell J. Goulas, Jr. was employed by Denbury Management, Inc. as a pumper-gauger in the Lake Chicot Field in St. Martin Parish, Louisiana. Mr. Goulas read gauges on oil and gas wells, filed reports of these readings and perform various tasks at Denbury's land-based Lake Chicot Production Facility.

Mr. Goulas used the M/V CRAWFISH, a 28-foot aluminum boat, to commute to the Denbury facility. Mr. Goulas also used the M/V CRAWFISH to travel to and from the well platforms. Most of Mr. Goulas' work, however, was at the Denbury land-based production facility.

On April 25, 1998, Mr. Goulas was operating a tractor at Denbury's production facility when he allegedly injured his back while pulling on a piece of pipe.

B. Proceedings Below.

On April 23, 1999, plaintiffs (Mr. Goulas, his wife, and minor child) filed suit against Denbury, C.F. Bean Corp. and Gulf Inland Contractors, Inc. pursuant to the Jones Act,

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[1]28 U.S.C. §1441 is attached hereto as Appendix A-3.1-A-3.2; 28 U.S.C. §1446 is attached hereto as Appendix A-4.1-A-4.3; 28 U.S.C. §1447 is attached hereto as Appendix A5.1; and 46 U.S.C. §181 et.seq. is attached hereto as Appendix A-6.1-A-6.9.

46 U.S.C. §688, and the general maritime laws of the United States in the 16th Judicial District Court, Parish of St. Martin, Louisiana. In their complaint, plaintiffs alleged that the unseaworthiness of the M/V CRAWFISH caused Mr. Goulas' accident and injuries, and that his employer, Denbury, and the other defendants were negligent.

On May 7, 1999, Denbury filed an Exception of No Right of Action due to a lack of seaman status which was granted by the trial court on June 2, 1999 without a hearing. Goulas appealed this order and, on December 6, 2000, the Louisiana Third Circuit Court of Appeals reversed the trial court's order granting Denbury's Exception of No Right of Action and ordered a hearing be held.

On March 16, 2001, Denbury timely filed Exceptions, Answers and Defenses which asserted as an affirmative defense its right to seek exoneration from or limitation of liability pursuant to 46 U.S.C. §183. On March 16, 2001, Denbury also propounded to plaintiffs Requests for Admissions concerning its right to exoneration from or limitation of liability. On March 31, 2001, plaintiffs responded to the Requests for Admissions and contested Denbury's right to exoneration from or limitation of liability.

On April 19, 2001, Denbury timely filed its removal petition in United States District Court for the Western District of Louisiana. Once plaintiffs contested Denbury's limitation defense, exclusive jurisdiction was conferred on the district court and the case became removable pursuant to 46 U.S.C. §§181, *et seq*. On May 17, 2001, plaintiffs filed their motion to remand. On July 16, 2001, the district court determined that the six-month time limitation of 46 U.S.C. §185 applied to the removal of the 46 U.S.C. §183 limitation defense and entered an order remanding the case to state court.[2]

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[2]Memorandum Ruling is attached hereto as Appendix B-1 - B-9.

In turn, Denbury timely sought review in the United States Court of Appeals for the Fifth Circuit. On April 15, 2002, the appellate court entered its decision, holding that Denbury had not identified a separable order in the Memorandum Ruling of the district court.[3] On May 23, 2002, the appellate court denied Denbury's motion for leave to file a petition for rehearing en banc.

II. SUMMARY OF THE ARGUMENT

Petitioner Denbury places before this Honorable Court a matter of unique importance to our nation's marine industry involving the Limitation of Shipowners' Liability Act, 46 U.S.C. §181 et. seq. ("the Limitation Act"): Can a contested limitation of liability defense in state court be removed to federal court?

Within this simplified issue are two more specific sub-issues: 1) Is a contested 46 U.S.C. §183 limitation defense subject to the six -month time bar of 46 U.S.C. § 185? and 2) Was the district court's determination that a contested 46 U.S.C. §183 defense is subject to the six-month time bar of 46 U.S.C. § 185 a separable and reviewable collateral order?

As this Court is aware, the Limitation Act provides that the vessel owner's liability for damage or injury shall not exceed the value of the vessel or her pending freight. The shipowner can avail itself of the Limitation Act by filing a petition for exoneration from or limitation of liability in federal district court pursuant to §185 of the Limitation Act within six months of written notice of a potential claim. Alternatively, and at issue here, this Court has long held that a shipowner may assert the right to limit liability through defensive pleadings in any court pursuant to §183 of the Limitation Act.

In the instant case, Denbury timely asserted a limitation defense in its answer to respondent Goulas' Jones

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[3]Judgment is attached hereto as Appendix C-1 - C-5.

Act cause of action in state court. Once Goulas contested Denbury's right to limit its liability, the limitation defense fell within the exclusive jurisdiction of federal court and, therefore, the case became removable. Denbury's removal was based on this Court's long standing precedent that a contested limitation defense is cognizable only in federal court. Despite this precedent, the district court remanded the matter to state court because it held that Denbury's limitation defense was time barred due to the application of the six month time limit of §185 to the §183 defense and that Denbury had failed to timely file a separate petition for exoneration from or limitation of liability.

At the very heart of the district court's order of remand was its erroneous determination that the six month time limit of §185 barred the removal of a contested limitation defense in state court under §183. In so holding, the district court ignored this Court's precedent which establishes that a contested limitation defense falls within the exclusive jurisdiction of federal court.

Compounding this error, the Fifth Circuit erred in determining that the district court's time bar determinations were not a separable and reviewable orders. While orders of remand are generally unreviewable, this Court long ago crafted an exception to a complete bar to appellate review in recognizing that orders separable from the remand itself were not beyond review. Such separable and reviewable orders are now before this Court.

The district court's time bar determinations preceded the remand order in both logic and fact. Furthermore, the order was conclusive against the parties. The Fifth Circuit erred in failing to identify and review this as a separable order. This failure is one of the errors sought to be reviewed.

The issue before this Honorable Court begs clarification given its significant potential impact. This Court has long sought to balance the plaintiff's choice of forum and remedy with the shipowner's federal statutory right to limit liability. The decisions below upset this

delicate balance by forcing the shipowner to race to the courthouse to file a petition for exoneration from or limitation of liability in federal court, thereby restricting the plaintiff's ability to proceed in the forum of his choice and further exhausting scarce judicial resources. For the district courts, which have within their respective jurisdictions navigable lakes, rivers, and oceans, the volume of such filings would be astronomical.

The effect of the decisions below would be to undermine the express intent behind the Limitation. Originally passed in 1851, the Limitation Act was designed to encourage investment in the domestic marine industry. A petition for limitation of liability in federal court is attended by the significant expenses of filing and posting the required bond. Committing such resources to potentially unnecessary litigation, especially for small-vessel owners, will negatively impact investment and overall growth in the marine industry.

Finally, the decisions below conflict with the precedent of this Honorable Court and that of the other circuits. If permitted to stand, these decisions will eviscerate a longstanding limitation defense in a state forum.

III. ARGUMENT

A. Issue Presented.

In its simplest form, the issue before the Court is whether a contested limitation defense under 46 U.S.C. §183 can be removed to federal court? In addressing this issue, Denbury seeks review of the determinations by the district court and Fifth Circuit. The matters of substance concerns the Fifth Circuit's affirmance of the district court's erroneous time bar determinations under the Limitation Act. The matter of procedure concerns the Fifth Circuit's erroneous ruling that the district court's order of remand did not contain a separable and reviewable collateral order. In presenting its argument below, Denbury will address the

substantive issue first as a way of providing the Court with the proper factual and legal framework within which to perform its review of the Fifth Circuit's and district court's orders.

B. The Limitation of Shipowners' Liability Act Provides Denbury with the Right to Limit Liability.

Passed in 1851, the Limitation of Shipowners' Liability Act provides a vessel owner with the statutory right to limit liability for damage or injury, occasioned without the owner's privity or knowledge, to the value of the vessel and its pending freight. See Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 446, 148 L. Ed. 2d 931, 121 S. Ct. 993 (2001).

Two procedural mechanisms exist to safeguard the owner's right to limit liability. First, the Limitation Act provides that a vessel owner, within six months of notice, may petition a federal district court for limitation of liability. 46 U.S.C. app. §185 (2002). Second, this Court has held that the advantages of limitation of liability may be secured in any court, including a state court, by pleading it as a defense. See Langnes v. Green, 282 U.S. 531, 540, 75 L. Ed. 520, 51 S. Ct. 243 (1931). Once contested, however, the issue of limitation becomes exclusively cognizable in a federal forum. Id. at 543.

In the instant case, Denbury elected to follow this Court's precedent by asserting a limitation of liability defense in its answer to the plaintiffs' petition in state court. In turn, Denbury propounded request for admissions to plaintiff to determine if its defense of limitation was contested. In responding to these requests, the plaintiffs chose to contest limitation of liability. At this juncture, the contested limitation defense invoked the exclusive jurisdiction of federal court which allowed Denbury to remove this matter to the district court.

C. The Plaintiffs' Decision to Contest Limitation of Liability Conferred Jurisdiction on the Lower Court.

This Court has held that a claim for limitation of liability does not fall within the scope of federal question jurisdiction. Lewis & Clark, 531 U.S. at 455. As such, a savings to suitors action in state courts cannot be removed to federal court by the mere assertion of a limitation defense. However, once Denbury's limitation defense was contested, the issue became exclusively cognizable in a federal court. Langnes, 282 U.S. at 543. Once contested, the only procedural vehicle available to Denbury to protect this defense was a removal petition.

While acknowledging that the mere assertion of a limitation defense state court did not make Goulas' case removable, the lower courts cut short their analyses and ignored this Court's precedent regarding the exclusivity of federal jurisdiction once the limitation defense was "contested".

The precedent for removing a contested limitation defense from the state court into the exclusive federal forum arises from this Honorable Court's decisions in Langnes v. Green and ExParte Green, 286 U.S. 437, 76 L. Ed. 1212, 52 S. Ct. 602 (1932). Since the district court's order and the Fifth Circuit's subsequent affirmance ignore the clear pronouncements of this Court in Langnes and ExParte Green, a closer examination of these cases is in order.

In Langnes, the owner of the fishing vessel Aloha filed a petition for limitation of liability in a federal district court two days prior to trial of a state claim arising from injuries suffered on the vessel. Id. at 532-33. The district court issued an order restraining further proceedings in the state court and a monition to all claimants to present their claims before the district court. Id. at 533. After the district court denied a motion to dissolve the restraining order, the plaintiff claimant appealed. Id. The court of appeals

reversed and remanded the case with instructions to dismiss the limitation action. Id. at 534.

On certiorari, this Court reversed the decisions of both the appellate and district courts. Id. at 544. Since it appeared that only one claim existed and that the right to limit liability would not be contested in the state court, the Langnes Court directed the district court to dissolve the restraining order. In addition, as a precautionary measure, the Langnes Court instructed the district court to retain the limitation proceeding in the event the petitioner's right to limit was contested. Id. at 542. This Court explained that the state court was competent to adjudge liability and to ascertain the value of the vessel in order to limit the vessel owner's liability. Id. at 543. However, should the vessel owner's right to limit liability be contested, exclusive jurisdiction of the issue would be vested in the federal court. Id.

Following the decision in Langnes, the claimant in the state court action indeed challenged the vessel owner's right to limit liability, prompting the owner of the Aloha to seek relief once again from the federal court. The federal court issued an injunction preverting the claimant from proceeding in state court, concluding:

> To pursue common-law remedy in the state court, the suitor must admit the right to limit liability, thus withdrawing from the case any federal question, and his recovery, if any, will be limited to the value of the schooner; and, if issue is taken upon the right to limit, then this court has jurisdiction of the entire controversy.

The Aloha, 56 F.2d 647, 648 (W.D. Wash. 1932).

The claimant then sought a writ of mandamus, which was denied. In Ex Parte Green, the Supreme Court left in tact the above holding of the district court, stating:

> It is clear from our opinion [Langnes v. Green] that the state court has no jurisdiction

> to determine the question of the owner's right to a limited liability, and that, if the value of the vessel be not accepted as the limit of the owner's liability, the federal court is authorized to resume jurisdiction and dispose of the whole case.

Id. at 439-440. Thus, this Court concluded that, once the claimant contested the shipowner to limit liability, the state court lost its concurrent jurisdiction, and the issue of the shipowner's right to limit liability was cognizable solely in the federal court.

In the instant case, the district court was initially correct in positing that the mere assertion of a limitation of liability defense in state court alone did not confer jurisdiction on the federal courts. (See App. B-4) As is clear from the Langnes and Ex Parte Green decisions allow state courts to have concurrent jurisdiction in saving to suitors cases when the vessel owner's right to limit liability is uncontested. Unfortunately, this is where the lower courts stopped their respective analyses.

However, under this Court's precedent, the analysis must continue because, once the respondents chose to contest Denbury's right to limit its liability, no other forum beside that of the federal courts existed with authority to resolve the issue. Id. At that juncture, the claim became removable pursuant to 28 U.S.C. §1446(b) and 28 U.S.C. §1331. In fact, removal was the only procedural vehicle remaining for Denbury to preserve its defense of limitation. By failing to take their analysis to this next logical and necessary step, the courts below wandered from the clear path this Court's precedent and, as a result, the lower courts committed reversible error.

D. The District Court Erred in Determining that a Six-Month Time Limitation Attached to a Limitation of Liability Defense Removed from State Court.

In its remand order, the district court errantly determined that the six-month time limitation of §185 barred the removal of a contested §183 limitation of liability defense. (See App. B-7-B-8) The district court's erroneous decision stems, in part, from its confusion over the 1936 Amendments to the Limitation Act and reliance on a U.S. Fifth Circuit precedent which contravenes this Court's controlling precedent and conflicts with other circuits' decisions.

Prior to the 1936 amendments, a petition for limitation of liability, made pursuant to 46 U.S.C. §185, could be filed in a federal district court at any time. See Cincinnati Gas & Electric Co. v. Abel, 533 F.2d 1001, 1003 (6th Cir.); cert. denied, 429 U.S. 858, 50 L.Ed.2d 136, 97 S.Ct. 158 (1976). The petition could even be filed once a decision had been rendered by another court. Id. In response to these tactics, Congress drafted the 1936 Amendments to ensure prompt action on the part of vessel owners and to deter duplicative adjudication. See Deep Sea Tankers v. The Long Branch, 258 F.2d 757, 772 (2d Cir. 1958); cert. denied, 358 U.S. 933, 3 L. Ed. 2d 305, 79 S. Ct. 316 (1959). Glaring in its absence in the 1936 Amendments is any reference to the applicability of the six-month time limitation to an affirmative defense of limitation of liability filed in state court under §183. Id.

The Court of Appeals for the Third Circuit squarely addressed the inapplicability of the six-month time limitation to the defense of limitation of liability in The Chickie. 141 F.2d 80 (3d Cir. 1944). The court therein held:

> We think it is abundantly clear, in view of the historical development of the statute, that the time limitation put in §185 by the 1936 amendment and made expressly applicable to a proceeding by petition at the suit of the

> owner, is not to be read into §183(a) by implication, particularly in view of the fact that both sections were simultaneously amended in 1936.

Id. at 85. The Court of Appeals for the Fifth Circuit has apparently adopted the foregoing reasoning, as have the Second and Ninth Circuits. See Signal Oil & Gas Co. v. The Barge W-701, 654 F.2d 1164, 1173, (5th Cir. 1981); cert. denied, 455 U.S. 944, 71 L. Ed. 2d 656, 102 S. Ct. 1440. See also Sana v. Hawaiian Cruises, Ltd., 181 F.3d 1041 (9th Cir. 1999); Deep Sea Tankers v. The Long Branch, 258 F.2d 757 (2d Cir. 1958); Murray v. New York Central Railroad Co., 287 F.2d 152 (2d Cir.); cert. denied, 366 U.S. 945, 6 L. Ed. 2d 856, 81 S. Ct. 1674 (1961).[4]

In departing from this line of precedent, the district court's opinion relied on In the Matter of Vatican Shrimp Co., Inc., 820 F.2d 674 (5th Cir.); cert. denied, 484 U.S. 953, 98 L. Ed. 2d 371, 108 S. Ct. 345 (1987) to deprive Denbury of any benefit of asserting a §183 defense in state court. Under the district court's order, the six-month time limit of §185 applied to Denbury's §183 defense. As a result, a shipowner's only recourse is to file a §185 petition, which results in significant expense and a "race to the courthouse."[5]

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[4]As discussed more thoroughly below, the district court and court of appeals below followed different circuit precedent which appeared to reach an opposite conclusion. See In the Matter of the Complaint of Vatican Shrimp Co, Inc., 820 F. 2d 674 (5th Cir.); cert. denied, 484 U.S. 953, 98 L. Ed. 2d 371, 108 S. Ct. 345 (1987).

[5]Such a requirement runs counter to analogous areas of law. For example, a diversity case does not become removable until the amount in controversy exceeds the jurisdictional amount. See U.S.C. §1333, See Chapman v. Powermatic, Inc., 969 F.2d 160 (5th Cir. 1992); cert. denied, 507 U.S. 967, 122 L. Ed. 2d 774, 113 S. Ct. 1402 (1993).

Besides being a unique deprivation of a vessel owner's rights to exclusive federal jurisdiction, the district court's decision is inapposite to the intent of the drafters of the Limitation of Shipowner's Liability Act. As noted, Congress sought through the 1936 Amendments to prevent eleventh-hour filing of petitions for limitation of liability, thus precluding duplicative adjudication and waste of judicial resources. See Deep Sea Tankers, 258 F.2d at 772. Such concerns are not germane to the issue of an affirmative defense of limitation of liability asserted in state court. The vessel owner's petition for limitation of liability is an offensive tool to consolidate claims before a single forum and restrain suit in state court. The timing of such a limitation petition is completely within the control of the vessel owner. In contradistinction, the assertion of limitation of liability as a defense, as filed herein, affords the plaintiff in the state court action the unfettered ability to control the invocation of federal jurisdiction. If the plaintiff chooses not to contest the right to limit liability, the claim will proceed in the state forum. It is only when the decision to contest the right is made that the issue must be joined in federal court. Langnes, 282 U.S. at 543. As the Deep Sea Tankers court noted, "the abuses which resulted under Section 185 prior to its amendment are not encountered when limitation is pleaded by way of answer, because the libelant, by filing its libel, controls the time within which the remedy must be invoked." 258 F.2d at 772-73.

As the district court's determination that a six-month time limitation attaches to removal of a contested limitation of liability defense directly conflicts with decisions of the other circuits and the intent of the legislature, this Court should accept certiorari and reverse.

E. The District Court Further Erred in Holding that Failure to File a Complaint for Limitation of Liability Precluded Invocation of Federal Jurisdiction.

Based on Vatican Shrimp, the district court determined that, while vessel owners may choose to plead limitation of liability as an affirmative defense in state court, the right will be forfeited unless it timely files a petition for limitation of liability in federal court. (See App. B-5) Owing to this determination's conflict with the precedent of this Court and other circuits, a closer review of Vatican Shrimp is required.

In Vatican Shrimp, the defendant asserted the defense of limitation of liability in a state court and subsequently filed a separate petition for limitation of liability under §185 more than six months after its receipt of notice of claim. 820 F.2d at 676. The petition for limitation of liability was dismissed by the district court as untimely and the defendant appealed. Id.

The Vatican Shrimp defendant subsequently removed the state case under 28 U.S.C. §1441. Id. The district court remanded the case to state court on the basis that it had previously ruled that defendant could not limit its liability in the federal courts. Id. The defendant similarly appealed the order of remand. Id. The court of appeals consolidated these appeals.

The court of appeals then affirmed the dismissal of the complaint for limitation of liability on the uncontradicted facts that it was filed more than six months following the defendant's receipt of notice of claim. Id. at 679. Next, the Vatican Shrimp court addressed the propriety of removal. Id. at 680. The court posited the following:

> [W]e recognize that shipowners may choose to set up the defense of limitation of liability under either method: by pleading the substantive provisions of section 183 in a

> properly filed answer in any court, or by filing a section 185 petition in a federal district court. However, if a shipowner is sued in state court, the owner's failure to file a section 185 petition in a federal district court within six months after receiving written notice of the claim will result in forfeiture of the right to limit liability should the claimant contest the limitation defense. This is so because **solely** filing in the state court an answer in which limitation is pled obviously does not provide a federal court with jurisdiction to act. Id. at 678. (Emphasis added).

The Vatican Shrimp's court's holding that a vessel owner's failure to timely file a petition for limitation of liability forfeits the limitation defense in the state forum, is clear error and conflicts with this Court's precedent. In fact, the Vatican Shrimp court admitted its decision was in conflict. Id. Specifically, the Vatican Shrimp court erroneously modified the procedure prescribed by this Court in Langnes "to reflect the 1936 amendment to section 185." Id.[6] As discussed more fully above, there is no evidence in the record surrounding the 1936 Amendments to indicate such an intent on the part of the legislature. It is this holding which creates a direct conflict with the decisions of the other circuits. The Chickie, 141 F.2d at 85.

In relying on Vatican Shrimp, the courts below erred in their analysis of the predicate for exercising jurisdiction.

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[6]While Langnes and Ex Parte Green were decided before the 1936 Amendments to the Limitation Act, the time limits in those Amendments were not directed to §183 and, as such, do not affect this Court's prior precedent. The Chickie, Supra. Moreover, after the Amendments, removal was the correct procedure for protecting a contested limitation defense.

As with the federal interpleader statute, 28 U.S.C. §1335, which provides a similar concursus of claims, the federal courts' authority to adjudicate a petition for limitation of liability pursuant to 46 U.S.C. §185 is predicated on the establishment of a *res* from which claims will be disbursed. See Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U.S. 207, 215, 47 S. Ct. 357, 71 L. Ed. 612 (1927). The limitation petition takes on the nature of a proceeding in rem. In contrast, the federal court's authority to adjudicate a contested limitation defense is predicated solely on the nature of the issue, i.e., its exclusive cognizance in a federal court exercising admiralty jurisdiction. See Langnes, 282 U.S. at 543.

The Fifth Circuit's holding in Vatican Shrimp is perhaps excused in its reasoning by the lack of evidence in the opinion demonstrating that the defendant's right to limit liability had even been contested in the state forum. The appellate court herein, however, has no such excuse. While the lower courts were correct in holding that the mere assertion of a limitation defense in state court does not confer jurisdiction on the federal court, Vatican Shrimp, 820 F.2d at 678; see also Lewis & Clark, 531 U.S. at 455, the lower courts' analyses fall short by failing to recognize that it is the contest of the right to limit liability which confers exclusive jurisdiction on the federal court and presents the opportunity for removal. Langnes, 282 U.S. at 543.

Had Congress intended to make the procedure outlined in 46 U.S.C. §185 the sole method for invoking the jurisdiction of the federal courts, it undoubtedly might have done so. The clear absence of such an intent should have precluded the Fifth Circuit from altering the established precedent of this Court. The plain language of 46 U.S.C. §185 itself is an acknowledgment by the drafters of multiple procedural mechanisms for securing the right to limit liability because §185 provides that a vessel owner "may" petition the federal courts for limitation of liability.

The district court erred in relying on the Court of

Appeals for the Fifth Circuit's flawed reasoning in Vatican Shrimp to determine that Denbury's decision not to file a petition for limitation of liability somehow precluded the federal courts from assuming jurisdiction. Unlike Vatican Shrimp, Denbury did not "solely" file a limitation defense in state court. Rather, Denbury confirmed that plaintiff contested its right to limitation which, under this Court's precedent, does "provide a federal court with jurisdiction to act."

F. The Court of Appeals Erred in Finding that the District Court's Time Bar Determinations Were Not Separable and Reviewable Orders.

Following the above analysis of the substantive rights of a vessel owner under the Limitation Act, the Court now has a better framework within which to review the lower courts' procedural errors regarding the reviewability of the separate and collateral orders.

1. The Orders Below

In its order, the district court stated "this Court agrees the Limitation Act, 46 U.S.C. §181, provides federal district courts with exclusive jurisdiction over the vessel owner's right to limit its liability and that state courts do not have concurrent jurisdiction over actions for limitation of liability" (emphasis added). (App. B-4) Despite this holding, the district court ignored this Court's precedent and analyzed Denbury's removal under Vatican Shrimp to hold that "Plaintiffs' Motion to Remand must be GRANTED on the basis this Court **now** lacks jurisdiction to hear the limitation action as six months has passed and a limitation proceeding filed would be untimely" (emphasis added). (App. B-7-B-8)

In turn, the court of appeals held "(t)he district court's remand was based explicitly on Vatican Shrimp's

holding that a defensive §183 pleading does not make a case removable because it provides no basis for federal jurisdiction. Denbury can identify no order that is separable and reviewable under the collateral order doctrine". (App. C-5)

2. The Errors Below

A close examination of the district court's order, however, does show that two separable and reviewable orders can be discerned from this ruling. First, the district court determined that Denbury's limitation defense was untimely. Second, the district court ruled that Denbury's failure to timely file a petition for exoneration from or limitation of liability pursuant to §185 precluded Denbury from removing its §183 limitation defense from state court. (See App.B-7-B-8)

In dismissing Denbury's appeal under the collateral order doctrine, the Fifth Circuit, citing Tillman v. CSX Transp., Inc., 929 F.2d 1023, 1026-27 (5th Cir.); cert. denied, 502 U.S. 859, 116 L. Ed. 2d 139, 112 S. Ct. 176 (1991), stated that "the district court need not explicitly state that it is remanding the case pursuant to §1447(c); it need only utter the 'magic words' that it believes it 'lacks subject matter jurisdiction' for the remand to be 'totally unreviewable.'" Id. However, a later Fifth Circuit panel in Doleac ex rel. Doleac v. Michalson, 264 F. 3d 470 (5th Cir. 2001), criticized Tillman for using overly broad language and suggesting that, if the resulting remand of the district court cannot be reviewed by the appellate court, then a prior, underlying order of the district court also cannot be reviewed. Id. at 484. In response to this suggestion, Doleac states:

> "[O]ur cases both preceding and following Tillman have allowed appellate review of a separate issue, if it is reviewable under §1291 or under an exception to §1291-finality, such as the collateral order doctrine. In short, Tillman, or at least its dicta, conflicts with our

> prior precedent that allows review of a separable, collateral order despite preclusion of the review of remand." Id.

3. The Law On Separability and Reviewability

While it is true that this Court has held that 28 U.S.C. §1447(d) generally bars review of orders of remand issued pursuant to 28 U.S.C. 1447(c), Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 343, 46 L. Ed. 2d 542, 96 S. Ct. 584 (1976), this Court long ago crafted an exception to this general bar by recognizing that an order separable from that of remand are reviewable on appeal. See Waco v. United States Fidelity & Guaranty Co., 293 U.S. 140, 143, 79 L.Ed. 244, 55 S.Ct. 6 (1934).

In Waco, the district court's order of remand encompassed three separate orders. 293 U.S. at 142. Included in the Waco order was a determination that the cross-defendant was an unnecessary and improper party which required dismissal of the cross-complaint. Id. As the dismissal undermined the diversity of the remaining parties, the district court remanded the case for lack of jurisdiction. Id. The City of Waco appealed arguing that the decision was contrary to the laws of Texas and, on remand, the district court's order would be treated as conclusive on the issue of the City's right to maintain the cross-action. Id. at 142-43. The court of appeals dismissed the appeal, holding that the order of remand was unreviewable. Id. at 142.

In reversing the court of appeals and remanding for a determination of the propriety of the district court's dismissal of the cross-claim, this Court held:

> True, no appeal lies from the order of remand; but in logic and in fact the decree of dismissal preceded that of remand and was made by the District Court while it had control of the cause. Indisputably this order is the subject of an appeal; and, if not

> reversed or set aside, is conclusive upon the petitioner.

Id. at 143. Premised on the language in Waco, a separable order must (1) precede the order of remand in logic and fact and (2) be conclusive against the parties. See Doleac, 264 F.3d at 481.

The courts of appeal and district courts have interpreted Waco to fashion a functioning doctrine of separability which affords limited appellate jurisdiction. See Doleac ex rel. Doleac v. Michalson, 264 F.3d 470 (5th Cir. 2001); Kimbro v. Velten, 30 F.3d 1501 (D.C. Cir. 1994); cert. denied, 515 U.S. 1145, 132 L. Ed. 2d 833, 115 S. Ct. 2584 (1995); Aliota v. Graham, 984 F.2d 1350 (3d Cir.) cert. denied, 510 U.S. 817, 126 L.Ed.2d 37, 114 S.Ct. 68 (1993); Pelleport Investors, Inc. v. Budco Quality Theatres, Inc., 741 F.2d 273 (9th Cir. 1984); Katsaris v. United States, 684 F.2d 758 (11th Cir. 1982).

In addition to Waco's requirement of separability, this Court's decisions in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 93 L.Ed. 1528, 69 S.Ct. 1221 (1949) and, recently, in Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 135 L. Ed. 2d 1, 116 S. Ct. 1712 (1996), also subjects these orders to further analysis to determine their reviewability under the Collateral Order Doctrine. See Doleac, 264 F.3d at 489; Kimbro, 30 F.3d at 1503.

An order is reviewable under §1291 if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." See Catlin v. United States, 324 U.S. 229, 233, 89 L. Ed. 911, 65 S. Ct. 631 (1945). Nevertheless, this Court has recognized a narrow class of collateral orders which are immediately reviewable because they '"conclusively determine [a] disputed question"' that is '"completely separable from the merits of the action,"' '"effectively unreviewable on appeal from a final judgment,"' and '"too important to be denied review."' Quackenbush, 517 U.S. at 712.

4. The District Court's Time Bar Determinations Were Separable from the Order of Remand

Under the "separable" analysis required by Waco, it cannot be seriously disputed that the district court's determination that the removal of Denbury's §183 defense was time barred preceded the order of remand "in logic and in fact." In fact, the order of remand was predicated solely on these determinations. Prior to ordering removal, the district court acknowledged that the Limitation Act provided a district court with exclusive jurisdiction over administration of the Limitation Act. Despite this acknowledgment, the district court remanded the case based on its erroneous belief that Denbury's defense was time barred and the federal forum had to be preserved by filing a separate petition for exoneration from or limitation of liability under §185.

While encompassed within the district court's order of remand, these distinct determinations preceded the remand order. After admitting that federal courts have "exclusive jurisdiction," the district court herein consciously interpreted 46 U.S.C. §§181, *et seq.*, in making its determinations regarding the applicability of the six-month time limitation and the necessity of filing a petition for limitation of liability.

These determinations also precede the remand order in logic, as the district court was powerless to remand the case unless it concocted some means of circumventing the admitted exclusive jurisdiction of federal court. Once the district court made its legally unsupported rulings that the §183 defense was time barred and that Denbury had failed to preserve federal jurisdiction by filing a separate petition for exoneration from or limitation of liability within six months, the district court was then free to remand the case to state court. Without those rulings, remand would have been impossible.

The second facet of the Waco analysis on separability is conclusiveness. Owing to the similarity of this facet with the conclusive requirements under the analysis of reviewability, petitioner refers the Court to the section below.

5. The District Court's Time Bar Determinations are Reviewable Under the Collateral Order Exception to 28 U.S.C. §1291

In order for the separate order to be "reviewable," the order must be conclusive of the disputed question, collateral to the merits of the principal action, unreviewable on appeal and address an important disputed issue. Quackenbush, 517 U.S. at 712.

a. Conclusive Determination of the Disputed Question

The district court's time bar determinations effectively and conclusively determined a disputed question between the parties. The plaintiffs in the instant case chose to contest Denbury's right to limit liability, thus invoking exclusive federal jurisdiction. See Langnes, 282 U.S. at 543. Denbury, seeking the federal forum guaranteed by statute and the Court's precedent, removed the case to the district court. Conclusivity here is predicated on the exclusive jurisdiction of the federal court.

The Fifth Circuit has defined conclusivity as having the preclusive effect of being functionally unreviewable in the state court. Doleac, 264 F.3d at 482 (citing Angelides v. Baylor College of Medicine, 117 F.3d 833, 837 (5th Cir. 1997)). Conclusivity in the instant case hinges solely on the issue of the district court's exclusive jurisdiction to hear a contested limitation of liability defense. Ordinarily, a district court's decision that the running of a statute of limitations precludes it from hearing a case might have little effect on a state court proceeding in which the parties have already joined the

issue. However, this Court's insistence that the limitation defense, once contested, is exclusively cognizable in federal court would effectively preclude a review of the issue on remand to the state court. See Langnes, 282 U.S. at 543. On remand, the state court would lack the jurisdiction to adjudicate the contested right to limit liability and that right will be effectively lost.

Similarly here, if the district court's determinations herein are allowed to stand, the limitation issue cannot be joined in any other proceeding given the exclusive nature of the federal jurisdiction over this issue.

b. Collateral to the Merits

Denbury's right to limit its liability is collateral to the merits of the instant case. While 46 U.S.C. §§181, *et seq.*, confers on Denbury the right to limit its liability in the federal forum, the import of the statute is to cap the vessel owner's liability. As the Hon. Justice Jackson noted:

> In order that disaster at sea might not jeopardize the shipowner's other assets, Congress limited his liability to the "value of the interest of such owner in such vessel, and her freight then pending." This limitation serves much the same purpose for maritime ventures that the corporate fiction serves for the landsman's enterprises.

Black Diamond Steamship Corp. v. Robert Stewart & Sons, Ltd., 336 U.S. 386, 399, 93 L. Ed. 754, 69 S. Ct. 622 (1949). A shipowner's limitation right is secondary to the primary purpose of any maritime litigation -- the proof of fault and recovery of damages by the claimant.

c. Unreviewable on Appeal

The district court's determinations are effectively unreviewable on appeal. In Quackenbush, this Court addressed the issue of reviewability, stressing the finality of an order of remand. 517 U.S. at 714. Once the district court remands a case to state court, it completely disassociates itself from matter. Id.

In the instant case, if the district court's determinations are allowed to stand, Denbury's right to limit liability will be irretrievably forfeited. Given the cloak of non-reviewability afforded by 28 U.S.C. §1447(d), nothing will remain of the instant case in federal court to afford review. On remand, the state court will lack jurisdiction to adjudicate the contested limitation defense. See Langnes, 282 U.S. at 543.

d. Importance of the Disputed Question

Finally, Denbury's right to limit liability is too important to be denied review. The legislature has made a conscious decision to allow a vessel owner to limit its liability for damages to the value of the vessel and its pending freight. Black Diamond Steamship Corp., 336 U.S. at 399. If left in place, the effect of the decisions below would be to strip the vessel owner of that right.

In Moses Cone, this Court found that a stay of federal court proceedings while a state court action was pending, in effect, amounted to a refusal to adjudicate the merits and was sufficiently important for immediate review. 460 U.S. at 12. In the instant case, the district court, by its order of remand, has effectively refused to adjudicate the limit of the vessel owner's liability and precluded the state court from hearing the issue by its finding of exclusive federal jurisdiction.

The importance of the right asserted in the instant case is analogous to the issue presented in Lauro Lines S.R.L. v. Chasser. 490 U.S. 495, 104 L. Ed. 2d 548, 109 S. Ct. 1976 (1989). In Lauro Lines, the defendant moved to dismiss the pending case in the Southern District of New York on the grounds that a forum selection clause precluded adjudication. Id. at 496. The district court denied the motion, prompting an appeal. Id. In joining the majority's holding that the district court's denial of the motion did not satisfy the elements of the Collateral Order exception to 28 U.S.C. §1291, the Hon. Justice Scalia drew the distinction between the right to be sued in a particular forum and the

right to immunity from suit. Id. at 502. The latter was deemed sufficiently important for immediate review as delaying an appellate decision would amount to stripping the defendant of his right. Id. The right would be eviscerated by subjecting the defendant to trial. Id. In contrast, the defendant's right to adjudication in a particular forum was vindicable on review. Id.

Like Lauro Lines, the instant case presents this Court with the interpretation of 46 U.S.C. §§181, *et seq.* and Denbury's right to remove a contested limitation for adjudication in a federal forum. If allowed to stand, the effect of the decisions below would be to completely strip Denbury of its right to limit its liability.

Petitioner respectfully submits that the district court's time bar determinations satisfy the elements of both Waco and the Collateral Order exception to 28 U.S.C. §1291. As such, the Fifth Circuit erred in holding that Denbury did not show a separate and reviewable order.

G. The Erroneous Decisions Below Significantly Impact The Delicate Balance Between the Savings to Suitors Clause and Federal Admiralty Law.

As long ago as the decision in Langnes, this Court has recognized the tension between the saving to suitors' clause and the right of a vessel owner to limit liability for damage or injury. 282 U.S. at 538. United States District Courts are granted original and exclusive jurisdiction over any civil admiralty or maritime case, "saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. §1333(1). In contrast, the vessel owner's right to limit liability, once contested, is exclusively cognizable in federal court. Langnes, 282 U.S. at 543. As evidenced by the decision in Lewis & Clark, this Court has consistently endeavored to balance the plaintiff's right to seek a remedy in the forum of his choice with the vessel

owner's right to have its contested limitation rights adjudicated exclusively in the federal forum. 531 U.S. 438. In Lewis & Clark, this Court struck that balance by permitting a claim to proceed in state court after the plaintiff stipulated that the vessel owner's right to limit liability would not be contested. 531 U.S. at 451.

If allowed to stand, the effect of the decisions below would be to disrupt the balance between plaintiff's remedy and vessel owner's right. Now, vessel owners, such as Denbury, would be cast unwittingly into a "race to the courthouse". To preserve the right to limit liability, a vessel owner would be compelled to preemptively file a complaint for limitation of liability in the federal forum, even before a lawsuit is filed by a potential plaintiff.

An effect of this "race to the courthouse" would be to usurp the plaintiff's initial choice of forum. While the plaintiff may stipulate in the federal proceedings that the limitation defense will not be contested, he or she would nonetheless be compelled to answer the monition in federal court. Such a practice would place the plaintiff at a practical disadvantage. At such an early juncture in the proceedings, the plaintiff would be precluded from making a reasoned decision to contest the limitation of liability if he or she desires to preserve his or her remedy in a state court.

H. Compelling the Vessel Owner to File a Complaint of Limitation of Liability Unnecessarily Strains and Consumes Limited Judicial Resources.

In addition to rely on this Court's precedent, the vessel owner's decision to assert a defense of limitation of liability in state court flows from its logical belief that filing a petition for limitation of liability pursuant to 46 U.S.C. §185 may be both duplicative and unnecessary. The vessel owner may assert the defense despite its reasoned belief that, under the circumstances of the case, the right will not be contested or that the value of the plaintiff's claim will fall far below the

value of the vessel. Moreover, the vessel owner in a single claimant scenario will not benefit from the principal advantage of the petition for limitation of liability, i.e., the concursus of claims afforded by 46 U.S.C. §185. The vessel owner may likewise desire to avoid the expense of duplicative litigation by remaining in state court until his right to limit liability is contested or the value of the claim rises to exceed the value of the vessel.

Despite the foregoing concerns, all mitigating against invocation of federal jurisdiction at an early stage in the proceedings, the decisions below now compel the vessel owner to protect his right by filing a preemptive petition for limitation in federal court. Despite the fact that the plaintiff's claim may initially be valued only at $10,000, juxtaposed against a vessel owner's $100,000 interest in the vessel and its pending freight, the owner would be unwise to forego filing a petition in the federal forum. Under the decisions below, should the calculation of the likely value of the plaintiff's claim prove erroneous, by merely asserting a defense in state court the vessel owner would forfeit his right to limit liability.

The resulting practice emanating from the lower courts' decision will unnecessarily consume judicial resources in the already crowded federal docket by compelling adjudication of a petition in which the vessel owner's right to limit liability may ultimately go uncontested. Attendant to these considerations is the expense visited on both plaintiff and defendant by compelling unnecessary litigation in the federal forum.

I. The Decisions Below Will Have a Significant Economic Impact on the Marine Industry and Circumvent the Express Intent Underlying the Limitation of Liability Act.

It is axiomatic that the risk in maritime commerce has existed since our ancestors first plied the seas. In the words of the Hon. Justice Jackson and by the express language of

the statute, the Limitation Act "is designed to encourage American capital to risk itself in shipping ventures where 'ships are but boards, sailors but men: . . . and then there is the peril of waters, winds, and rocks.'" Black Diamond, 336 U.S. at 399. Despite technology and advanced ship construction, those risks remain.

As of January 1, 1999, the U.S. domestic marine fleet included 55 container ships, 56 dry bulk carriers, 8 cement carriers, 107 tankers, 26,650 dry cargo and tank barges, hundreds of passenger vehicles serving as ferries, excursion, and gaming vessels, and approximately 110,000 commercial fishing vessels. See U.S. Department of Transportation, An Assessment of the U.S. Marine Transportation System - A Report to Congress, (1999). Relative to this considerable fleet, the number of small vessels dwarfs the commercial vessel numbers. It is these small boat owners who may be legally unsophisticated, lacking unfettered access to counsel and sizable financial resources, that will most acutely feel the effects of the decisions below.

A petition for limitation of liability, made pursuant to 46 U.S.C. §185, requires the posting of security in the amount of the vessel and its pending freight. Alternatively, vessel owners would have to assign their rights to the vessel to a court-appointed trustee pending resolution of the claim. It is unnecessary to further expound on the considerable expense attended by this procedural mechanism. In a multiple claimant scenario, the posting of security is necessary to establish the *res* justifying federal jurisdiction and the resulting concursus. Yet, as posited above, such a requirement is unnecessary when a contested limitation defense is removed to federal court as the nature of the issue singularly invokes the federal court's jurisdiction. In short, the vessel owner filing a petition for limitation of liability must come before the court with a heavy wallet and be prepared to commit resources that could otherwise be expended on the maintenance and growth of his or her own business.

In light of the express intent of the drafters of the Limitation of Shipowner's Liability Act to encourage investment and growth in the marine industry, the lower courts' decisions should compel this Court to revisit the issue. The burdensome costs attending a petition for limitation of liability will discourage further investment in the industry and necessarily limit the amount of financial resources that might otherwise be committed to the growth of the domestic industry. Vessel owners are already beset by dwindling fish populations, excessive regulations, and the ever present risk of their chosen commercial endeavor. Further burdening the industry is unwise. At the very least, such a decision should result from a conscious decision on the part of the legislature, not by the judiciary.

IV. CONCLUSION

If allowed to stand, the lower courts' decision would perpetuate a conflict between the circuits, stand in stark contract to this Court's precedent and upset the carefully crafted balance between a plaintiff's and a shipowner's rights.

Equally as important, a denial of this writ or affirmance of the lower courts would completely eviscerate a shipowner's right to raise a defense of limitation in state court. Neither the Limitation Act or this Court's precedent allow such a radical denial of rights. From its very inception, the Limitation Act has granted a shipowner alternate means for protecting its right to limit liability. Here, Denbury chose to follow this Court's precedent and raised its limitation defense in state court. Once this limitation became contested, Denbury properly removed this case to federal court, where exclusive jurisdiction rested.

Contrary to the district court's and court of appeals' holdings, there is no time bar for raising a §183 defense under the Limitation Act. Nor does the Limitation Act require a shipowner to file a §185 petition to protect its

rights. By judicial fiat, the lower courts herein have chosen a path which creates a conflict across the board.

Aside from the lower courts' departure from the controlling precedent on the substantive limitation issues, the court of appeals elected to avoid the procedural issue presented by the district court's separable and reviewable order. Contrary to the court of appeals' holding, the use of the "magic words" jurisdiction should not end the court's analysis. Especially, where the district, as it did here, admits that federal courts have "exclusive jurisdiction" over a vessel owner's right to limit liability. (App. at B-4). Once such exclusive jurisdiction is admitted, any order which attempts to circumvent such jurisdiction should be reviewed under the Collateral Order doctrine. Under such a review, the district court's time bar determinations met all of the requirements for separable and reviewable orders.

After such a review, Denbury firmly believes this Court will accept the review of this writ and reverse the lower courts' holding. The relief sought by Denbury is to preserve its limitation defense in federal court. This relief will still allow the plaintiffs, upon agreeing to well established stipulations, to remand their case to state court. Thus, achieving the balance long crafted by this Court.

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INDEX

Appendix A-1 -
28 U.S.C. §1291 ..... A-1.1

Appendix A-2 -
28 U.S.C. §1292 ..... A-2.1 through A-2.4

Appendix A-3 -
28 U.S.C. §1441 ..... A-3.1 through A-3.2

Appendix A-4 -
28 U.S.C. §1446 ..... A-4.1 through A-4.3

Appendix A-5 -
28 U.S.C. §1447 ..... A-5.1

Appendix A-6 -
46 U.S.C. §§181-196 ..... A-6.1 through A-6.9

Appendix B -
Memorandum Ruling of the
United States District Court for
the Western District of Louisiana
dated July 17, 2001, granting
Plaintiff's Motion to Remand .... B-1 through B-9

Appendix C -
Judgment of Fifth Circuit Court of
Appeals dated April 15, 2002 .... C-1 through C-5

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART IV - JURISDICTION AND VENUE
CHAPTER 83 - COURTS OF APPEALS

Sec. 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Sec. 1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of

Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction -

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its

discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an

action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

Sec. 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

Sec. 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c) (1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an

order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the

State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

Sec. 1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

LIMITATION OF SHIPOWNER'S LIABILITY ACT

46 USCS § 181 (2002)
§ 181. Liability of masters as carriers

If any shipper of platina, gold, gold dust, silver, bullion, or other precious metals, coins, jewelry, bills of any bank or public body, diamonds, or other precious stones, or any gold or silver in a manufactured or unmanufactured state, watches, clocks, or timepieces of any description, trinkets, orders, notes, or securities for payment of money, stamps, maps, writings, title-deeds, printings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material, furs, or lace, or any of them, contained in any parcel, or package, or trunk, shall lade the same as freight or baggage, on any vessel, without at the time of such lading giving to the master, clerk, agent, or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered.

46 USCS § 182 (2002)
§ 182. Loss by fire

No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.

46 USCS § 183 (2002)
§ 183. Amount of liability

(a) Privity or knowledge of owner; limitation. The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) Seagoing vessels; losses not covered in full. In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $ 420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $ 420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) Tonnage of seagoing vessels. For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) Loss of life or bodily injury arising on distinct occasions. The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) Privity imputed to owner. In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) "Seagoing vessel" defined. As used in subsections (b), (c), (d), and (e) of this section and in section 4283A [46 USCS Appx §§ 183b], the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended [46 USCS Appx §§ 188].

(g) Vicarious medical malpractice liability; statutory limitations. In a suit by any person in which the operator or owner of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, such operator, owner, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of

the United States in which the shoreside medical care was provided.

46 USCS Appx § 184 (2002)
§ 184. Apportionment of compensation

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

46 USCS § 185 (2002)
§ 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter, as amended, and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended [46 USCS Appx §§ 183], or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such

sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended [46 USCS Appx §§ 183]. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

46 USCS § 186 (2002)
§ 186. Charterer may be deemed over

The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this Title relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof.

46 USCS § 187 (2002)
§ 187. Remedies reserved

Nothing in the five preceding sections [46 USCS Appx §§§§ 182, 183, 184-186] shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or an account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel.

46 USCS § 188 (2002)
§ 188. Limitation of liability of owners applied to all vessels

Except as otherwise specifically provided therein, the

provisions of the nine preceding sections and of section eighteen of the act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes," approved June twenty-sixth eighteen hundred and eighty-four (23 Stat. 57) [46 USCS Appx §§ 189], shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

46 USCS § 189 (2002)
§ 189. Limitation of liability of owners of vessels for debts

The individual liability of a ship-owner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: Provided, That this provision shall not affect the liability of any owner incurred previous to the passage of this act [enacted June 26, 1884], nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners.

46 USCS § 190 (2002)
§ 190. Stipulations relieving from liability for negligence

It shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge.

Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

46 USCS § 191 (2002)
§ 191. Stipulations relieving from exercise of due diligence in equipping vessels

It shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence [to] properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

46 USCS § 192 (2002)
§ 192. Limitation of liability for errors of navigation, dangers of the sea and acts of God

If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect,

quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

46 USCS § 193 (2002)
§ 193. Bills of lading to be issued; contents

It shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

46 USCS § 194 (2002)
§ 194. Penalties; liens; recovery

For a violation of any of the provisions of this act [46 USCS Appx §§§§ 190 et seq.] the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the

Government of the United States.

46 USCS § 195 (2002)
§ 195. Certain provisions inapplicable to transportation of live animals

Sections one and four [46 USCS Appx §§§§ 190, 193] shall not apply to the transportation of live animals.

46 USCS § 196 (2002)
§ 196. Certain laws unaffected

This act [46 USCS Appx §§§§ 190 et seq.] shall not be held to modify or repeal sections 4281, 4282 and 4283 of the Revised Statutes of the United States [46 USCS Appx §§§§ 181, 182, and 183], or any other statute defining the liability of vessels, their owners, or representatives.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE/OPELOUSAS DIVISION

Filed 7-16-2001

RUSSELL J. GOULAS, JR.	CIVIL ACTION NUMBER: 01-0710
VERSUS	JUDGE DOHERTY
DENBURY MANAGEMENT, INC.	MAGISTRATE JUDGE TYNES

MEMORANDUM RULING

This matter comes before the Court on a Motion to Remand filed on behalf of plaintiffs, Russell and Arlene Goulas, individually, and as the administrator of their minor child, Blake Goulas, arguing plaintiff's Jones Act claim, pursuant to 46 U.S.C. § 688, is not removable pursuant to the "Savings to Suitors Clause," 46 U.S.C. § 1331.

Defendant, Denbury Management ("Denbury") asserts its assertion of limitation of liability as a defense in its answer to plaintiffs' state court petition provides for removal arguing, "that the exclusive federal jurisdiction associated with the vessel owner's right to seek exoneration from or limitation of liability makes an action filed under the Savings to Suitor's Clause removable to federal district court." Defendant's Memo., p. 2.

Procedural History

On April 23, 1999, plaintiffs, Russell J. Goulas, Jr. and his wife, filed suit against Denbury, C.F. Bean Corp. ("Bean") and Gulf Island Contractors, Inc. ("Gulf Island") pursuant to the Jones Act, 46 U.S.C. § 688 and the general maritime laws of the United States. Plaintiffs alleged back injuries allegedly sustained in an accident on April 25, 1998, were the result of Goulas's employment as a Jones Act seaman with Denbury. Plaintiffs also asserted the M/V CRAYFISH, this Court presumes, vessel owned by Denbury, was unseaworthy.

On April 26, 1999, Goulas filed an amending and supplemental complaint to add an additional defendant, BLR Construction, Inc. On May 7, 1999, Denbury filed an Exception of No Right of Action and supporting memorandum in the 16th Judicial District Court, Parish of St. Martin, Louisiana. On June 2, 1999, Judge Forter granted Denbury's Exception of No Right of Action and judgment was entered on August 11, 1999. On August 4, 1999, Goulas filed a Notice of Appeal which was signed on October 7, 1999.

On December 6, 2000, the Louisiana Third Circuit Court of Appeals reversed the trial court's order granting Denbury's Exception of No Right/Cause of Action without hearing and remanded the matter to the district court to be reinstated.

On March 16, 2001, Denbury filed its re-urged Exceptions, Answer and Defenses. In this pleading, Denbury asserted its right to seek exoneration from or limitation of liability pursuant to 46 U.S.C. § 183. Additionally, on March 16, 2001, Denbury propounded Requests for Admissions to

plaintiff, to determine whether plaintiff contested Denbury's right to limit its liability to the value of the vessel in this litigation, the M/V CRAYFISH.

On March 31, 2001, plaintiff responded to the Request for Admissions and contested Denbury's right to exoneration from liability, as well as Denbury's right to limit its liability to the value of the vessel at issue.

On April 19, 2001, Denbury filed its removal petition in United States District Court for the Western District of Louisiana and on May 17, 2001, plaintiffs' filed the instant Motion to Remand.

Analysis

Defendant concedes in its memorandum at page 10 that "an admiralty action filed in state court under the "Savings to Suitor's Clause" is not removable solely because it may have been filed in federal court." Calmer S.S. Corp. v. Taylor, 303 U.S. 525, 527-28, 82 L.Ed. 993, 58 S.Ct. 651 (1938). Defendant asserts, however, "removal of such an action is possible if federal jurisdiction is based on something other than admiralty, such as a federal statute." Tennessee Gas Pipeline v. Houston Casualty Ins. Co., 87 F. 3d 150, 153 (5th Cir. 1996). Defendant's Memo., P. 10.

Defendant further asserts that the Limitation of Liability Act of 1851 ("the Act") , 46 U. S. C. § 181, et seq. , is such a federal statute, i.e., one "that protects the right of vessel owners to seek limitation of their liability to the value of the vessel. The Act gives exclusive Jurisdiction over the vessel owner's right to limit liability to federal district courts. State courts do not have concurrent jurisdiction over actions for

limitation of liability." Id. at 11.

This Court agrees an admiralty action filed in state court under the "Savings to Suitor's Clause" is not removable unless the removal of the action is based on something other than admiralty jurisdiction, i.e., another "federal statue." Additionally, this Court agrees the Act, 46 U.S.C. § 181, provides federal district courts with exclusive jurisdiction over the vessel owner's right to limit its liability and that state courts do not have concurrent jurisdiction over actions for limitation of liability. However, it is at this juncture that defendant's argument fails.

46 U.S.C. § 181, et seq.

The Fifth Circuit in 'The-Matter of the Complaint of Vatican Shrimp Co., Inc., 820 F.2d 674 (5th Cir. 1987) provides the methods by which a vessel owner may seek to limit his liability under the Act and states:

> That is, we recognize that shipowners may choose to set up the defense of limitation of liability under either method: by pleading the substantive provisions of section 183 in a properly filed answer in any court, or by filing a section 185 petition in a federal district court. However, if a shipowner is sued in state court, the owner's failure to file a section 185 petition in a federal district court within six months after receiving written notice of the claim will result in forfeiture of the right to limit liability should the claimant contest the limitation defense. This is so because solely filing in the state court an answer in which limitation is pled obviously does not provide a federal court with jurisdiction to act. In contrast,

defensive pleading under section 183 *in* a federal district court answer does not present the same Jurisdictional problems. The district court, having jurisdiction to hear the entire case initially filed with it, can adjudicate and rule an a limited liability issue that is raised in a properly filed answer.

The Fifth Circuit further states in footnote 4:

A shipowner who files a section 185 petition must also post a bond with the court in the amount of the shipowner's interest in the vessel and its pending freight, or transfer his interest, in the vessel and its freight to a court appointed trustee. 46 U.S.C. § 185 (1982); Supp. R. Admir. & Maritime F(l)(a), (b). We realize that these requirements will prove burdensome to a shipowner who must file a section 185 petition before the claimant has even filed suit. **Nonetheless, absent proper removal of the case to federal court, defensive pleading in a state court answer cannot provide a district court with jurisdiction to hear the claim.** As Gilmore and Black have noted:

> To save himself the expense of filing a limitation complaint and posting security, a shipowner might be tempted to wait until some claimant has instituted an action and then plead the Limitation Act in his answer. However, if he is competently advised, he will always proceed by filing § 185 complaint except in a single claim situation where he is sure the single claimant will bring his action in federal court. Gilmore & Blank, *supra*, § 10-15 at 858-59.

(emphasis added).

The Fifth Circuit further states:

> In sum, once written notice of a claim is received, unless that notice is a complaint filed in federal court, the prudent shipowner would file a timely section 185 petition in district court and move to stay the federal proceedings on the limitation petition until such time as limited liability is contested. This practice will ensure that a federal court may exercise its exclusive jurisdiction to hear the limitation issue even if the claimant eventually files suit in a state court and contests limitation more than six months after giving written notice of the claim. Defendant, argues the filing of the defense of limitation of

liability in its answer in the state court proceeding, now entitles the defendant to remove plaintiff's Jones Act claim and have Denbury's limitation defense heard in this Court. Vatican Shrimp, supra, contrary to Denbury's assertions, does not support this position.

The same facts as are before this Court were also present in the Vatican Shrimp case, as:

> In its state court answer, Vatican Shrimp raised the defense of exoneration or limitation of liability to the value of the F/V VATICAN and its extending freight, which Vatican Shrimp assessed at $200,331.83. On April 17, 1986, one and one-half years after the suit was filed, Vatican Shrimp petitioned the federal district court for 'Limitation of liability under 46 U.S.C. § 185 and for restraint of the state court trial.

The district court denied Vatican Shrimp's § 185 petition

as untimely and:

> On May 15, 1986, Vatican Shrimp removed the case from state to federal court under 28 U.S.C. § 1441. Because it had previously ruled that Vatican Shrimp could not limit its liability in the federal courts, the district court, on the plaintiff's motion, entered an order remanding the case to state court.

Vatican Shrimp subsequently appealed dismissal of its § 185 petition. The Fifth Circuit states:

> This court has not previously addressed the first question that Vatican Shrimp raises, that is, under what circumstances does a federal court have jurisdiction to adjudicate a contested claim for limitation of liability when the shipowner has pled limitation defensively in a properly filed state court answer.
> . . .
>
> We hold that on the facts of the case now before us, Vatican Shrimp's section 185 petition was untimely, and Vatican Shrimp's defensive pleading in the state court answer did not provide the federal court with jurisdiction to hear the shipowner's limitation claim.

Accordingly, as the relevant facts of this case are within the relevant facts in the Fifth Circuit holding of Vatican Shrimp, the outcome will be the same. Plaintiff's Motion to Remand must be GRANTED on the basis this Court now lacks jurisdiction to hear the limitation action as six months

has passed and a limitation proceeding filed would be untimely.[1]

Accordingly, based on the foregoing, plaintiffs' Motion to Remand [doc. #10] is hereby GRANTED, REMANDING this matter to the 16th Judicial District Court for the Parish of St. Martin, Louisiana.

THUS DONE AND SIGNED this **13** day of **July**, 2001.

/s/ Rebecca F. Doherty
REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

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[1]This Court further notes that the Fifth Circuit did not decide the question of "whether the Savings to Suitor's Clause or the non-removability provision of the Jones Act, 28 U.S.C. § 1445(a) would preclude the removal of a shipowner's suit to limit liability, an exclusively federal claim," as resolution of the issue was unnecessary to decide the Vatican Shrimp case. However, the Fifth Circuit did note:

> . . . that the "well-pleaded complaint" rule and the 'derivative jurisdiction" doctrine may be relevant to the resolution of this issue. See Franchise Tax Bd. v. Const. Laborers Vac. Trust, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983) (for purposes of removal under 28 U.S.C. § 1441, federal jurisdiction must be established in the plaintiff's complaint, not in the defendant's answer); (exclusively federal claim cannot be removed from state court); Azzopardi v. Ocean Drilling and Exploration Co., 742 F.2d 890, 892 n. 2 (5th Cir. 1984) (derivative jurisdiction doctrine would preclude removal of a state action under *the* Jones Act and the Death on the High. Seas Act).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE/OPELOUSAS DIVISION

Filed 7-16-2001

RUSSELL J. GOULAS, JR.	CIVIL ACTION NUMBER: 01-0710
VERSUS	JUDGE DOHERTY
DENBURY MANAGEMENT, INC.	MAGISTRATE JUDGE TYNES

ORDER

Considering the foregoing Memorandum Ruling;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs' Motion to Remand [doc. #10], filed on behalf of plaintiffs, Russell and Arlene Goulas, individually, and as the administrator of their minor child, Blake Goulas, is GRANTED, REMANDING this matter to the 16th Judicial District Court for the Parish of St. Martin, Louisiana.

Lafayette, Louisiana this 13 day of July, 2001

/s/ Rebecca F. Doherty
REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 01-30963
Summary Calendar

ARLENE GOULAS; RUSSELL J. GOULAS, JR.,
Individually and on behalf of Blake Goulas,
Plaintiffs-Appellees,

v.

DENBURY MANAGEMENT, INC., et al.
Defendants,

DENBURY MANAGEMENT, INC.
Defendant-Appellant.

On Appeal from the United States District Court,
Western District of Louisiana
USDC No. 01-CV-710

Before REYNALDO G. GARZA, JOLLY., and WIENER, Circuit Judges

REYNALDO G. GARZA, Circuit Judge:[1]

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[1]Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

I.

Russell Goulas filed a Jones Act complaint against Denbury Management and others in Louisiana state court on April 23, 1999, alleging that he suffered a back injury while employed on Denbury's vessel, the M/V CRAWFISH, Denbury's answer asserted a limitation-of-liability defense under 46 U.S.C. § 183. Denbury did not file a federal petition for limitation of liability. When Goulas responded to requests for admissions in a manner indicating that he contested the limitation-of-liability defense, Denbury removed the action to federal court.

Goulas submitted a motion to remand the case to state court that was granted by the district court. The court stated that it lacked jurisdiction because a defense of limitation of liability does "'not provide the federal court with jurisdiction to hear the shipowner's limitation claim." *See* R. 251 (quoting *Vatican Shrimp Co., Inc. v. Solis,* 820 F.2d 674, 677 (5th Cir. 1987)). The court noted as well that a limitation-of-liability proceeding under 46 U.S.C. § 185 would be untimely as more than six months had passed since Denbury received written notice of Goulas's claim. Denbury appealed.

II.

A vessel owner can "restrict its liability, resulting from any occurrence for which the vessel is liable, to the value of the vessel and its impending freight." *Vatican Shrimp,* 820 F.2d at 677; 46 U.S.C. § 183. This limitation of liability can arise from either 46 U.S.C. § 185, which permits an owner to file a petition in federal court seeking to limit liability, or an owner may plead limitation as an affirmative defense. *See Vatican,* 820 F.2d at 677-78. If an owner opts for the former

route, the § 185 petition must be filed in federal court within six months of written notice of the claim. If, however, an owner is sued in state court and does not file a § 185 petition in federal court within six months of receiving written notice of the claim, the owner forfeits the right to limit liability should the claimant contest the limitation defense. *See id.* at 678. The driving rationale is that merely filing in state court an answer in which limitation is pled in no way provides a federal court with jurisdiction to act. *See id.*

Remand of a case followed by removal is governed by 28 U.S.C. § 1447(c).[2] Under 28 U.S.C. § 1443, remand orders made pursuant to § 1447(c) remand orders "are not reviewable on appeal, by mandamus, or otherwise, except in civil rights cases." *Tillman v. CSX Transp., Inc.*, 929 F.2d 1023, 1026 (5th Cir. 1991). Restrictions on review of a remand order apply only to remands based on a ground specified in § 1447(c). *See Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-28 (1996); *McDermott Intl, Inc., v. Lloyds Underwriters of London*, 944 F.2d 1199, 1201 (5th Cir. 1991). The district court need not explicitly state that it is remanding the case pursuant to § 1447(c); it need only utter the "magic words" that it believes it "lacks subject matter jurisdiction" for the remand to be "totally unreviewable." *Tillman*, 92 F.2d at 1026-27. Because the district court's remand order explicitly stated that it "lacks jurisdiction to hear [Denbury's] remand action," the remand is not reviewable by way of appeal or writ of mandamus.

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[2] Section 1447(c) states that a "motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. . . ." 28 U.S.C. § 1447(c).

III.

Denbury next asserts that the lower court's ruling is an appealable collateral order. If an issue underlying a remand order has "independent relevance in adjudging the rights of the parties (i.e., relevance beyond determining the existence of federal subject matter jurisdiction), the decision is separable" and may be reviewed "even if it also happens to have an incidental effect on the court's jurisdiction." *Doleac ex rel. Doleac v. Michalson*, 264 F.3d 470, 486 (5th Cir. 2001). The issue must precede the remand "in logic and in fact," and the ruling must be "conclusive" in that it is functionally unreviewable by the state court. *Linton v. Airbus Industrie*, 30 F.3d 592, 597 (5th Cir. 1994).

Once a court determines that an issue is separable, it must then decide whether it is reviewable under the collateral orders doctrine. *See Doleac*, 264 F.3d at 489-91. To be reviewable, "the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978); *Doleac*, 264 F.3d at 490. Denbury's arguments address only the separability prong. *See* Appellant's Brief, at 8-15.

Denbury argues that the district court found the § 183 limitation defense to be subject to the same six-month time limitation as is a § 185 petition. While the district court did mention the six- month time limit, it did so only in reference to the unavailability of a § 185 petition. As Denbury had not attempted to file a limitation-of-liability petition under § 185, this statement was incidental.

The district court's remand was based explicitly on Vatican Shrimp's holding that a defensive § 1983 pleading does not make a case removable because it provides no basis for federal jurisdiction. Denbury can identify no order that is separable and reviewable under the collateral order doctrine.

DISMISSED.